

EXHIBIT W

1 DR. JOHN EADY,
2 CALLED AS A WITNESS AND SWORN IN BY
3 THE COURT, WAS EXAMINED AND
4 TESTIFIED AS FOLLOWS:
5

6 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Do you
7 solemnly swear or affirm under penalty of perjury that your
8 testimony in this proceeding will be the truth, the whole
9 truth and nothing but the truth?

10 THE WITNESS: I do, Your Honor.

11 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Thank you.
12 Please state and spell your name for the record.

13 THE WITNESS: John, J-O-H-N. My middle name,
14 Lafon, is a family name, L-a-f-o-n. Last name is Eady,
15 E-A-D-Y.

16 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Thank you.
17 Go ahead.

18
19 DIRECT EXAMINATION

20 BY DR. FIRESTONE:

21 Q. Good afternoon, Dr. Eady. Tell me a little bit
22 about what kind of education and training have you had in
23 your field of expertise?

24 A. Where would you like me to start, sir?

25 Q. Well, why don't you start with college,

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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In the Matter of the Statement)	
of Issues Against:)	
)
AFRAAZ RUSTOM IRANI,)	CASE NO.
) 800-2013-000420
)
) O.A.H. NO.
) 2014050866
RESPONDENT.)	
_____)	

Elihu Harris State Office Building,
1515 Clay Street, Hearing Room A
Oakland, California

---oOo---

Monday, September 29, 2014

9:00 a.m.

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Reported by: Rachael Dees, CSR No. 13815

DIAMOND COURT REPORTERS
1107 2nd St., Suite 210
Sacramento, CA 95814
916-498-9288

1 undergraduate school?

2 A. Undergraduate school, I went to college in South
3 Carolina called College of Charleston in Charleston,
4 South Carolina.

5 I finished in three years, because I came from a
6 poor family and didn't have the money to go all four years.

7 I got accepted to medical school, and I completed
8 medical school with a Medical College of South Carolina, now
9 called Medical University of South Carolina in Charleston in
10 three years.

11 And in my last year, because I was running out of
12 money, the Air Force. I got a sponsorship by the Air Force
13 in something called a "35-13 Program," which paid my last
14 year in medical school.

15 Q. Did you grow up in South Carolina?

16 A. I did. Yes, sir.

17 Q. And then after your completion of medical school --

18 A. I did --

19 Q. -- what did do you?

20 A. -- my internship. In those days, you did a general
21 internship at Malcolm Grove Air Force Base Hospital on an Air
22 Force base just on the south side of Washington DC.

23 I became a flight surgeon in the Air Force for
24 three years. I flew in an F-4 squadron for those four years,
25 and because I was in my third year -- or last year of medical

1 school, I was asked by the chairman of the orthopaedics
2 department if I wanted to be an orthopaedist.

3 He was a great man, and I felt that will fit me.
4 But because the Air Force had sponsored me in the last year
5 of medical school, I had to serve a minimum of three years in
6 the Air Force.

7 Q. And where did you take your orthopaedic surgery
8 residency training?

9 A. Orthopaedic surgery residency was back at
10 Charleston, University of South Carolina Department of
11 Orthopaedics.

12 Q. Did you stay at that University in any capacity?

13 A. I did not at the time, because again, the Air Force
14 sponsored me through residency. I had to go back in the
15 Air Force to serve time.

16 The rule was in the Air Force Code 10, you had to
17 pay back two years for the first year of residency training
18 and one year for every year thereafter.

19 So I went back in the Air Force and was stationed
20 at Lincoln Heath in England, and I fulfilled two jobs. I was
21 an orthopaedist there. I was also flight surgeon for the 494
22 Fighter Squadron, which was the last Air Force squadron in
23 Europe. I ended that time because during my residency, I
24 fell in love with doing orthopaedic surgical oncology.

25 I applied to and got accepted to the University of

1 Florida orthopaedic fellowship, oncology and --

2 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I'm losing
3 you. So you applied and were accepted at University of
4 Florida --

5 THE WITNESS: Orthopaedic surgical oncology
6 program. Those were the early days of developing orthopaedic
7 oncology for kids with sarcomas, bone sarcomas, a broad
8 spectrum of --

9 BY DR. FIRESTONE:

10 Q. So that's essentially the specialty in orthopaedics
11 of operating on a various cancers of the bone?

12 A. Yes, sir, both bone and soft tissue.

13 Q. Doctor, are you board certified in orthopaedic
14 surgery?

15 A. Yes, sir.

16 Q. Have you held any academic positions as a board
17 certified orthopaedic surgeon?

18 A. Yes.

19 Q. What type of positions have you held?

20 A. I was an assistant clinical professor at the
21 uniform -- University of Health Sciences when I was in the
22 Air Force.

23 I was also an associated professor of orthopaedics
24 when I retired from the Air Force at University of
25 San Antonio -- University of Texas at San Antonio, I don't --

1 Q. What rank, by the way, were you when you retired?

2 A. Colonel.

3 Q. Full Colonel?

4 A. Yes, sir. Because my eldest daughter was found to
5 have kidney disease just as I was retiring, and she couldn't
6 get health insurance because of her kidney disease.

7 I left the University of Texas and came back to
8 South Carolina and worked for three years to help pay for her
9 kidney and gave her one of my kidneys.

10 At that point, it was 1990. I was asked to come to
11 the University of South Carolina School of Medicine
12 Department of Orthopaedics and develop a state-wide
13 orthopaedic surgical oncology program, which I did. And I
14 ran that program and was the only orthopaedic surgical
15 oncologist for the state for nine years.

16 And in 1999 the University -- the Medical
17 University of South Carolina was developing the designated
18 cancer center for South Carolina and I was asked to go down
19 there to help develop an orthopaedic oncology program and it
20 was very honorable position. I thought it was the best thing
21 that could ever happen. So I went down there about nine
22 months later.

23 But I went on the -- I went in December of 1998.
24 And in September of 1999, the University of South Carolina
25 dean or the director or vice president for education affairs

1 called me and asked me if I would come back to do the
2 University of South Carolina in Columbia as a chair, which I
3 did.

4 Q. Well, let's clarify something, because there are
5 two University of South Carolina Medical Schools; is that
6 correct?

7 A. Yes, sir.

8 Q. Medical University of South Carolina the other is
9 just the University of South Carolina?

10 A. It's a little funny the school in Charleston was
11 started 1824. And it's like a school district, and it's
12 called the Medical University of South Carolina. It's
13 actually an entity in and of itself.

14 And in Columbia it's University of South Carolina
15 School of Medicine. It was started in 1978 with the help of
16 the VA law at that time that helped establish medical schools
17 across the United States in conjunction with the VA.

18 Q. What was your role at the University of South
19 Carolina in Columbia?

20 A. When I went there in 1989-90 time period, I was the
21 professor of surgical oncology. I started off as an
22 associate professor but was promoted to professor in about
23 1994 somewhere in there.

24 Q. Did you ever attain a position of chairman of the
25 Department of Orthopaedic Surgery at the University of South

1 Carolina Columbia?

2 A. Yes, sir. As I said, 1999 -- November of 1999.

3 Q. What is your experience as it relates to
4 orthopaedic surgery residency programs, Doctor?

5 A. I was the chair of the orthopaedic surgery
6 residency program at Wilford Hall Medical Center, which is
7 the Air Force's only training -- orthopaedic training
8 program.

9 I was consultant to the surgeon general in
10 orthopaedics the whole time I was there from 1983 until I
11 retired.

12 Q. Now, the Air Force program at Wilford Hall, that's
13 associated with the University of Texas, is that correct?

14 A. It is a stand-alone program, but it has an
15 affiliation with the University of Texas, yes.

16 Q. Similar to the affiliation with the program that
17 Dr. Irani was into the University of South Carolina?

18 A. Probably not similar. What the affiliation we have
19 in the department of orthopaedics is that the orthopaedic
20 residents from the University of Texas, San Antonio, rotated
21 with us out there for specific training education.

22 One was orthopaedic surgical oncology, because that
23 was the first, and for a while, the only orthopaedic surgical
24 oncology in the entire military.

25 So there was a time when I was doing 400 or

1 500 cases a year -- orthopaedic surgery on patients from all
2 the over the world.

3 Q. And what was your position in the orthopaedic
4 surgery residency training program there?

5 A. I was the chair, and I was also the program
6 director. Because in those days, you're both chair and the
7 program director.

8 Q. And then when you were at the University of South
9 Carolina after you left Texas, did you have any relationship
10 with the orthopaedic surgery program at Palmetto?

11 A. Yes, I think I said that. When I was originally
12 there, I developed the orthopaedic surgical oncology program
13 for the state.

14 As a said I went to the Medical University of South
15 Carolina in Charleston for nine months then back to the
16 University of South Carolina School of Medicine as the chair
17 of the orthopaedic surgery department.

18 Q. What was your role in the orthopaedic residency
19 program in Palmetto when you were there?

20 A. I was also the program director.

21 Q. Okay.

22 A. Again, in those days you were both.

23 Q. At some point you left the University of South
24 Carolina and went to the VA six miles away; is that correct?

25 A. That is correct. The Palmetto Health and Medical

1 School are separated. The medical school -- physically, it's
2 located actually on the VA campus. So the medical students
3 for their first two years go to that school on the campus at
4 the VA hospital.

5 And then third and fourth years, they -- two thirds
6 of them rotate through the VA Hospital, Palmetto Richland.
7 The local area combined program a third are actually sent to
8 Greenville for their clinical rotations.

9 The reason for that is in the State of South
10 Carolina, each year, we -- the state needs about 180
11 physicians to replace attrition.

12 People that are -- that have decided to take other
13 training or move to another state, who have died, the state
14 of South Carolina can only produce in the two programs about
15 140. They are raising that number. Hopefully, it will get
16 up to 180, but because you can't -- you couldn't put -- and
17 there has been some effort to put all of the medical school
18 training in Charleston and all in Columbia. If you look at
19 the state in either place, there are not enough clinicians to
20 train 140-150.

21 You have to break it up into areas across the state
22 and the Medical University does the same thing. They send
23 students to private hospitals, Carolinas Medical Center, for
24 rotations, for educational training.

25 Q. Doctor, in your field of orthopaedic surgery are

1 there such things as board certifications?

2 A. Yes.

3 Q. Have you ever been an examiner of candidates for
4 board certification in orthopaedics?

5 A. I was an examiner for the Medical Board for
6 15 years.

7 Q. Have you received any awards in your specialty?

8 A. Yes, sir. I think you'll see in my CV:
9 Outstanding Teacher of the Year, Outstanding Alumnus from
10 MUSC. Two of the most important ones to me, because that's
11 what it's all about is being able to teach medical students,
12 residents, fellows to get it.

13 Q. Doctor, you have authored more than 25
14 peer-reviewed articles and book chapters and books in your
15 field; is that true?

16 A. Yes, sir. And I've also produced instructional
17 course exhibits at the American -- Annual American Academy of
18 Orthopaedic Surgery. I think I've done four.

19 Q. Have you ever been involved in any programs
20 teaching orthopaedic surgeons and residents something about
21 communications skills?

22 A. Yes, sir. I am a communication skills mentor for
23 the American Academy of Orthopaedic Surgery, and I give
24 lectures across mostly the Southeast. Because the way the
25 academy works is, they -- like, for people in the -- in the

1 region of the United States to teach in that region, but I
2 have given lectures here at San Francisco at the annual
3 meeting of orthopaedic surgery in communication skills. My
4 most recent one was University of South Florida in June.

5 Q. When was the most recent publication in a
6 peer-reviewed journal that you have submitted and been
7 accepted?

8 A. I just published one in eMedicine last summer.

9 Q. How long ago was that?

10 A. I think I got the notification a week ago.

11 THE COURT REPORTER: I just need clarification,
12 eMedicine, correct?

13 (Talking over each other.)

14 DR. FIRESTONE: Your Honor, at this time I would
15 like to offer Dr. Eady's curriculum vitae. It's exhibit S in
16 Binder 1.

17 BY DR. FIRESTONE:

18 Q. Would you pull that up, Doctor?

19 A. Yes.

20 Q. And authenticate that that's a correct C.V. that's
21 current?

22 A. Exhibit S.

23 Q. Other than the journal that you got published a
24 week ago, is this a complete rendition of your curriculum
25 vitae?

1 A. Yes, sir.

2 DR. FIRESTONE: With that, I'd offer it, Your
3 Honor.

4 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: All right.
5 I'm marking the CV as Exhibit S for identification. Is there
6 any objection to Exhibit S?

7 MR. MERCER: No objection.

8 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Exhibit S
9 will be received into evidence.

10 (Respondent's Exhibit S was marked of identification and
11 admitted into evidence.)

12 BY DR. FIRESTONE:

13 Q. Doctor, in your participation in the program at the
14 University of South Carolina and the VA affiliated with the
15 University program, as well as a Palmetto Health Program, did
16 you become acquainted with a doctor by the name of
17 David Kuhn?

18 A. Yes.

19 Q. What is Dr. Kuhn's reputation there?

20 MR. MERCER: Objection, Your Honor, relevancy.
21 Again, we're here to determine whether or not the Applicant
22 is competent. The character of the various people involved
23 in the faculty at the University of South Carolina, while
24 possibly relevant to Dr. Irani's lawsuit in South Carolina
25 against that program, has only the vaguest and most remote

1 relevance to the key issue here whether Dr. Irani is
2 relevant.

3 And it seems to me that it -- and we would contend
4 that it's an undue consumption of time to spend time,
5 basically, sharing what's no more than gossip about persons
6 who are not before this tribunal, who are not the subject of
7 this case and whose character is irrelevant to it.

8 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Well, can
9 you narrow it down? I mean, I don't know need to everything
10 about Dr. Kuhn.

11 DR. FIRESTONE: I think this goes to the validity
12 and credibility of the information that Dr. Kuhn provided
13 with regards to Dr. Irani and the allegation that we are
14 making of it being prejudicial based on prejudice and bias.

15 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I think you
16 can still narrow the question so it's a little more relevant.

17 BY DR. FIRESTONE:

18 Q. Dr. Eady, can you tell us whether or not you're
19 aware of whether or not Dr. Kuhn was in any way prejudiced
20 towards minorities --

21 A. Yes, I can.

22 Q. -- of patients or residents?

23 A. Yes, I can.

24 Q. And what is the basis --

25 MR. MERCER: Same objection, Your Honor.

1 DR. FIRESTONE: What's the basis for --

2 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Just a
3 minute. Let me rule on the objection.

4 I'm going to overrule the objection, but I'm not
5 sure how relevant it will be at this time. But I'll allow
6 some questions on the subject at this time.

7 BY DR. FIRESTONE:

8 Q. What's the basis for your awareness of that issue?

9 A. I have personal experience with Dr. Kuhn.

10 Q. And what did you personally observe or hear or
11 experience?

12 A. Well, perhaps I should first paint it directly at
13 Afraaz.

14 In his second year, Afraaz was supposed to come to
15 the VA Hospital in January for his orthopaedic VA rotation.
16 I hadn't gotten any notification as to the site director
17 there of whether Afraaz was coming or not and Dr. Kuhn comes
18 or came -- he does not anymore. He came to the VA Hospital
19 once a week for seeing patients, usually, general orthopaedic
20 patients that ran a gamut.

21 I asked Dr. Kuhn if he was going to let me know
22 about what was going to happen with Afraaz. Was he coming?

23 And Dr. Kuhn's response to me, he said, "Well, you
24 mean Ahmed the Terrorist."

25 And I immediately told him that that was

1 considered -- I considered that a racist remark. It was not
2 to be repeated in the VA system, at which point Dr. Kuhn quit
3 talking to me after that.

4 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I'm sorry.
5 After that that he what?

6 THE WITNESS: He quit talking to me.

7 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Speaking to
8 you at all?

9 THE WITNESS: Yes, Ma'am.

10 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: What year
11 was this that you --

12 THE WITNESS: That was 2000 and -- was it 2013,
13 January --

14 DR. FIRESTONE: 2012.

15 THE WITNESS: 2012, sorry.

16 BY DR. FIRESTONE:

17 Q. I'm sorry, 2011.

18 A. 2011. Well, it was -- actually, I think it was
19 2012, I believe.

20 MR. MERCER: Your Honor, if it helps, Dr. Irani
21 entered his PGY-2 year in July of 2011. So if this was
22 January, it would have been 2012.

23 DR. FIRESTONE: Yes.

24 THE WITNESS: 2012 correct.

25 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Thank you.

1 THE WITNESS: And to just give you some
2 explanation, PGY-2 and PGY-4 residents usually rotated at the
3 VA for 6 months at a time. Because there were only two
4 residents each year, they split it up into six months for one
5 PGY-2, then it rotated to the other PGY-2. The same way with
6 the senior residents.

7 Now, that sometimes varied, because the residency
8 program would sometimes get a special dispensation from the
9 Residency Review Committee to add a third resident, and in
10 the areas that they had a third-year resident at that level
11 it would be four months at the time.

12 BY DR. FIRESTONE:

13 Q. Did you hear of any other prejudicial language that
14 related to racial discrimination from Dr. Kuhn?

15 MR. MERCER: Objection, Your Honor. This is way
16 overbroad, and I mean, we're talking about Dr. Irani -- and
17 at least that had some, although distant, relevance. Now,
18 we're going to talk about his attitude towards people in
19 general.

20 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Yes.
21 What's the relevance of that?

22 DR. FIRESTONE: Well, the relevance is Dr. Kuhn's
23 essential reputation for being a discriminate, prejudiced,
24 biased individual in this program.

25 MR. MERCER: Again, Your Honor, Dr. Kuhn did not

1 make the licensing decision in this case. Dr. Kuhn's not
2 applying for a medical license, Dr. Irani is. This is simply
3 not relevant.

4 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Well, I'm
5 going to ask you to limit it to prejudices against this --
6 you know, against your client or maybe other residents in the
7 program, but not just against, you know, discrimination
8 against people. I don't know how that would be relevant.

9 BY DR. FIRESTONE:

10 Q. Have you heard Dr. Kuhn's racial prejudicial
11 remarks about other residents besides Dr. Irani?

12 A. Yes, sir.

13 Q. What have you heard?

14 A. When I became the chair at the School of Medicine
15 Department of Orthopaedics at USC, one of my driving
16 forces -- because I felt the duty to South Carolina, which is
17 40 percent African American -- there have been few if any
18 African Americans ever accepted at an orthopaedic residency
19 program.

20 So I -- one of the orthopaedic residents we
21 accepted was Rodney Allan, who is a graduate of Morehouse,
22 graduate of Duke University, and we selected him as a
23 resident.

24 Each time a rotation occurred, I required the
25 attending staff -- most of time because there are only two

1 residents -- two or three attending staff to write reviews on
2 those folks that rotated on their program. And it included
3 strengths, weaknesses, what they could do better, what things
4 were missing.

5 And Dr. Kuhn wrote Rodney's second year; he wrote
6 that: "Rodney never showed up for operations on time in the
7 early morning. Rodney was ill prepared for his conferences.
8 He was ill prepared for his surgeries. He made mistakes in
9 surgery."

10 So I call Rodney in and asked him, "What's this all
11 about?"

12 And Rodney said, "He didn't know, because he was
13 late for conferences in the morning," because I required at
14 6:30 we always met morning, five days a week for a
15 conference.

16 On Mondays, it was a post-op conference. What we
17 did right. What we did wrong with surgery patients.
18 Tuesdays it was basic science. Wednesdays it was anatomy.
19 Thursdays it was review of academy articles, based on review
20 of specific entities, and Friday it was tumor day, primarily
21 because I'm a tumor specialist. I like tumors and I like to
22 teach that and I would.

23 Rodney said, "He didn't know, but he did show up
24 late for surgery in the mornings, because he was sometimes
25 dry comforts over." The attendings who were supposed to

1 start the cases any way, so I didn't consider that a problem.

2 I asked him why he -- what was meant by the fact
3 that he was ill prepared, and Rodney had no idea. So I
4 called Dr. Kuhn into my office and asked him a day or two
5 later -- asked him to give me some specific examples.

6 And as we went down each one, he kept saying, "You
7 take the side of residents over us. You never take our word
8 for what we say."

9 And I said, "That's not the issue. The issue is
10 give me some specific examples. What was he not prepared
11 for? What did he not know?"

12 And Dr. Kuhn said to me, "Well, you never take our
13 word for it anyway, but I'm telling you that little black
14 sambo should never graduate from this program."

15 And I immediately stopped the conversation and
16 said, "I am giving you a verbal warning. That's racist, and
17 if you utter it again I will write you up."

18 After that, I got the same type of conclusionary
19 statements that Rodney was not prepared. Rodney didn't show
20 up. Rodney didn't go to the VA when he was called at night.
21 When I investigated it, it didn't happen.

22 Q. Now --

23 A. Now, to give you a follow-up, Rodney has since
24 graduated. He has passed his boards. He's been practicing
25 in Florence, South Carolina and well respected.

1 BY DR. FIRESTONE:

2 Q. Dr. Eady, was it just male residents that he
3 expressed these kinds of opinions about?

4 A. Again --

5 MR. MERCER: Objection, Your Honor. Now, we've
6 gone --

7 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I think
8 we're getting a little far afield. Let's move onto something
9 else.

10 BY DR. FIRESTONE:

11 Q. Did you observe the attendings in their supervision
12 of residents?

13 A. Yes.

14 Q. Did you observe Dr. Kuhn in his supervision of
15 residents in the Palmetto program?

16 MR. MERCER: Objection, Your Honor, relevancy.
17 Again, I do keep saying the same thing over again, but
18 Dr. Kuhn's performance is not at issue here. Dr. Kuhn is not
19 applying for a license. Dr. Irani's performance is at issue
20 here.

21 So to the extent that we're going to engage into an
22 investigation of whether this witness felt that Dr. Kuhn was
23 or was not supervising other residents it has at best the
24 most remote relevance to whether or not Dr. Irani is
25 competent to practice medicine such that Dr. Irani and not

1 Dr. Kuhn should be licensed by the State of California.

2 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: What would
3 be the relevance of this line of questioning?

4 DR. FIRESTONE: The relevance is that Dr. Kuhn
5 indicates that he had or has the responsibility for
6 supervision.

7 One of the complaints that Dr. Irani had when he
8 wrote up in the grievance that lead to retaliatory behavior
9 by Dr. Kuhn was his lack of supervision in that program, and
10 his complaint that he was not adequately supervised by
11 Dr. Kuhn has a valid basis.

12 MR. MERCER: Well, Dr. Kuhn has not testified in
13 this case. So to say Dr. Kuhn said anything, is really kind
14 of a stretch.

15 The fact is that Dr. Irani is here. He can testify
16 as to how he felt that he was supervised, and that would be
17 the only relevant information.

18 This witness' information about other situations or
19 remotely from Adorn VA is simply not going to get us any
20 closer to Dr. Irani's competency.

21 DR. FIRESTONE: The litany of the records that
22 Dr. Kuhn submitted is really the issue, because the Board as
23 well as Dr. Nuovo took it at face value.

24 And I think that it is relevant. And it's relevant
25 to Dr. Irani, especially since he submitted a grievance

1 against Dr. Kuhn for not adequately supervising him. And
2 there's been retaliatory behavior leading to his termination
3 from the program.

4 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Well, I
5 don't know -- I don't think that his -- you know, that this
6 that Dr. Eady's observations of Dr. Kuhn's behavior in other
7 situations is really going to get us anywhere here.

8 I understand the conversation with regard to
9 Dr. Irani, and what the comments were about that and maybe
10 some part of their background relationship; but I don't
11 think -- I'm going to sustain the objection to that question.

12 BY DR. FIRESTONE:

13 Q. While you were chairman of the Palmetto program for
14 residents, what was the attrition rate at that time?

15 A. We lost one resident in ten years.

16 Q. Are you familiar with the attrition rate during the
17 period of time that Dr. Irani was in that program?

18 A. Yes, sir.

19 Q. What is that?

20 A. Well, to give you some background, I am essentially
21 I'm a site collector. There are two Graduate Medical
22 Committee functions. One at the VA. One at the Palmetto
23 Richland. And they have to communicate the shared knowledge
24 with each other.

25 And I go to the JMCE meeting at the VA, because

1 it's my responsibility. And they have to report what's
2 happened, and I know that last year they were both there --
3 Both PGY-1 residents left the program. And a PGY-2 -- one
4 was a PGY-2 resident left the program within the last two
5 years --

6 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: The last
7 thing you said, "Both the PGY-1s left the program last year,"
8 and the next thing --

9 THE WITNESS: The next was the PGY-2 left two years
10 ago. Of course, Dr. Irani and his year level Dr. Goodno both
11 left the program. Obviously, you know about Dr. Irani for
12 other figures.

13 BY DR. FIRESTONE:

14 Q. So in that four-year period how many out of the
15 eight residents that were rotating through left the program?

16 A. Well, there's actually 10, because you have to
17 count PGY-1 as an orthopaedic year.

18 Q. Okay.

19 A. It is no longer a separate entity. They start off
20 orthopaedic PGY-1 and go PGY-5. So there were five residents
21 in that period of time that left, so 50 percent.

22 Q. And the program has altogether 10 residents
23 including the interns, and they are PGY-1 right?

24 A. Usually. As I said, sometimes the program will get
25 a special approval, but -- and you have to apply to the RROC

1 to add a resident at a certain year level. So occasionally
2 there will be 11, but they will never let it go beyond one
3 extra-year level.

4 Q. This was during the period that Dr. Kuhn was
5 program director of the residency program; is that right?

6 A. Yes, sir. I retired in 2006, and they looked for a
7 chair for almost three years, could not find one, and named
8 Dr. Walsh -- he was acting chair for that period of time, and
9 then they named him permanent chair.

10 Q. Who is Dr. Walsh?

11 A. Dr. Walsh is the president chair of the orthopaedic
12 residents at Palmetto.

13 Q. Is there a relationship between Dr. Walsh and
14 Dr. Kuhn?

15 A. Yes, sir.

16 MR. MERCER: Objection, irrelevant.

17 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I'm a
18 little confused about when Dr. Kuhn came in, and --
19 BY DR. FIRESTONE:

20 Q. When did Dr. Kuhn take over the directorship of the
21 Palmetto program, Doctor?

22 A. In June of 2006, because I left July -- July 31st
23 and so he took over as the program director in June of 2006.

24 Q. And what's the relationship between Dr. Walsh, the
25 chairman of the department and Dr. Kuhn?

1 A. They were residents together at Dwight D.
2 Eisenhower Medical Center.

3 I know that because I -- for 10 years I volunteered
4 my time both at the Dwight D. Eisenhower Medical Center to
5 teach orthopaedic surgical oncology at the Medical College of
6 Georgia, in Augusta at the Medical University of South
7 Carolina. And in fact, the Army after ten years gave me the
8 Commanders -- Army Commanders Award for public service for
9 it.

10 Q. So Dr. Kuhn and Dr. Walsh were friends before they
11 came to the University South Carolina, right?

12 MR. MERCER: Objection, relevance.

13 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: What is the
14 relevance of is this?

15 DR. FIRESTONE: The relevancy, you'll notice on
16 many of the things that Dr. Kuhn signed, Dr. Walsh's name is
17 there as well.

18 MR. MERCER: That's a huge leap of logic that we're
19 now going to get into, just how intimate the friendship was
20 and somehow this will relate to Dr. Irani's competency?

21 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Can you
22 respond to that?

23 DR. FIRESTONE: Yes. It certainly -- Dr. Kuhn and
24 Dr. Walsh were buddies for many years. Dr. Walsh, actually
25 we'll find out had hired Dr. Kuhn, and therefore, endorsed

1 almost everything that Dr. Kuhn recommended.

2 MR. MERCER: Your Honor --

3 DR. FIRESTONE: They're both on the GMEC Counsel.

4 MR. MERCER: None of these people are here or will
5 be here to testify, and we're really going way beyond the
6 purpose of the statement of issues.

7 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: What -- are
8 there any --

9 DR. FIRESTONE: It goes to the credibility of
10 Dr. Kuhn's statement here, that he's submitted to the Board
11 and some of these have Dr. Walsh's name as well.

12 And we've wondered why does the chairman of the
13 department have his name there, and I think we can get an
14 explanation from Dr. Eady because of the relationship.

15 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: All right.
16 Well, I think, you know, we can just move on.

17 It suffices to say Dr. Walsh and Dr. Kuhn were
18 friends and longtime colleagues, and I don't think I need
19 more than that.

20 BY DR. FIRESTONE:

21 Q. Did you ever witness Dr. Walsh have any prejudice
22 against residents?

23 A. Yes.

24 Q. And what did you witness?

25 A. We had a Mormon resident that Dr. Walsh would ask,

1 "When are you going to get a real religion?"

2 Dr. Walsh is a very fundamentalist. I don't have
3 anything against fundamentalist Christians, but very
4 fundamentalist Christians that don't believe that Mormonism
5 is a real religion. So that answers your question.

6 Q. In your role as the head of the VA orthopaedic
7 program, what is the usual practice when seeing VA patients
8 there?

9 A. I'm sorry, I'm a little hard of hearing.

10 Q. What's the usual practice when seeing VA patients
11 there as far as urgency, and you know, whether a patient has
12 to be seen 24 hours after admission or immediately. What are
13 the procedures and rules at the VA in that regard?

14 A. I think I submitted to you the outline of the
15 response that both attendings and residents must conform.

16 One is a level one which means has to be answered
17 within an hour, and there must be communication between the
18 requesting physician and the receiving physician or the
19 consulting physician.

20 The level two is urgent, but can be seen within
21 24 hours. And the level three can be seen at -- usually, at
22 leisure, but certainly within several days.

23 And lastly is essentially a consultant opinion. We
24 get -- we get a few consults nowadays with electronic medical
25 records that we have to answer promptly, usually within

1 48 hours.

2 The emergency room when they call us for a
3 consultation request, will either tell us that it is a
4 heads-up notice that they're getting the patient to medicine,
5 but the patient has an orthopaedic problem or they want us to
6 admit it with medicine as a consulting service.

7 Usually, those will go back to the emergency room
8 physicians. By VA rules have the right to admit anybody from
9 the VA to any service they wish.

10 But I have a great relationship with them. They
11 don't usually admit the patients to my service without
12 calling me and telling me. But they will frequently admit to
13 medicine, because they think it's a medicine problem that
14 needs to be treated by medicine.

15 Q. Doctor, I'd like to refer you to Exhibit P in
16 Binder 1. What is Exhibit P? Can you identify it?

17 A. It says, "VA documentation" first documents. It's
18 a VA policy to seeing patients in response to consultation
19 requests. "Consultation" is what it reads.

20 Q. Page 364, will you look at that?

21 A. Yes. Page 364 is the VA outline for inpatient
22 consultation.

23 Q. Does that reflect what you just testified about?

24 A. Yes, sir.

25 Q. Doctor, you've reviewed the affidavits in this

1 matter; is that right?

2 A. Yes, sir.

3 Q. All 35 of them?

4 A. Yes.

5 Q. And as --

6 A. As well as the dean's letter.

7 Q. Have you also reviewed the packet that was
8 submitted to the Medical Board by Dr. Irani?

9 A. Yes.

10 Q. At the VA Dr. Irani as you said Was to rotate
11 through the VA; is that right?

12 A. Yes.

13 Q. Do senior residents have a responsibility for
14 teaching junior residents how to the appropriately handle
15 call duties?

16 A. Yes.

17 Q. Are you familiar with a resident by the name of
18 Dr. Jennifer Wood?

19 A. Yes.

20 Q. Was she Dr. Irani's senior resident?

21 A. Yes.

22 Q. Are you familiar with the events regarding a
23 patient who had cellulitis after a knee replacement surgery
24 that occurred on August 9, 2011?

25 A. Yes.

1 Q. Can you tell the Judge and the Medical Board what
2 transpired regarding Dr. Irani's involvement?

3 A. Doctor -- Dr. Irani was called by the medical --
4 the E.R. doctors with a, "heads up notification" that they
5 were admitting this patient to the medicine service, and that
6 the -- it wasn't absolutely urgent that he come, but they
7 wanted to him to know about it.

8 Usually that means you see them the next morning
9 when you make rounds in the hospital. I'm always there just
10 because I'm getting old and can't sleep all night, but I'm
11 always there in the morning by 6:30.

12 I start off my rounds in the SICU, then go through
13 wards. So I know about every orthopaedic patient that was
14 admitted to the VA hospital every day.

15 And for four years I was the only orthopaedist over
16 there. I have recently been successful in recruiting two
17 additional orthopaedists, two P.A.s, one nurse practitioners.
18 Primarily because of all the scandal that you've heard about
19 in the VA system. They're very unaccommodating now to add
20 additional people.

21 Q. What transpired involving Dr. Irani involvement in
22 that case?

23 A. I'm not sure what I --

24 Q. What was his participation in the care of -- as far
25 as his response time and so forth?

1 A. He did not go over there that night. The next
2 morning, he notified the resident that was supposed to come
3 to the VA, the residents have morning conference at Palmetto
4 Richland, and then come to the VA.

5 It's six miles across town and in the early morning
6 hours it's sometimes 25-30 minutes before you can get over to
7 the VA, but they get there usually by eight o'clock.

8 By that time, I've made rounds. And I know about
9 the patients. That patient was not an issue and as far as it
10 wasn't even an infection of the joint, it was actually a
11 cellulitis of the lower limbs and a patient that had
12 something called "chronic venostasis disease," which is where
13 the lower extremity soft tissues contract from scarring, and
14 the blood supply gets bad and they start getting infection.

15 Usually it's in a diabetic patients but can occur
16 in a very obese patient that has big limbs that tear in the
17 subcutaneous tissues. It's called "epidermolysis" and it
18 scars in then the venous blood supply gets damaged, and they
19 end up getting significant breakdown in their skin.

20 That skin gets irritated. It gets infected from
21 the skin bacteria, and they have to be admitted for elevation
22 and antibiotic treatment and then usually support hose.

23 Q. Dr. Kuhn criticized Dr. Irani, and you can see that
24 in G, page 182?

25 A. Say that again please, sir?

1 Q. G182. It's a 15 August 2011 notation.

2 A. Yes.

3 Q. He criticized Dr. Irani in number 4 there that he
4 did not evaluate the VA total joint patient with immediate
5 post-operative cellulitis in a timely fashion. Do you see
6 that?

7 A. Yes. It also says:

8 "Closing wounds with Vicryl suture."

9 And when I looked at that, I don't know what he
10 means by that. Vicryl suture is perfectly appropriate suture
11 material to use for deep tissues from the muscle periosteum
12 all the way to up subcutaneous tissues.

13 It's used almost routinely in the VA system. It's
14 inappropriate to use in the skin, but I can't give you an
15 answer as to what he means by that.

16 Q. Well, with regards to the patient with cellulitis
17 in her leg due to venostasis, was it within acceptable
18 standards for Dr. Wood who was the senior resident to advise
19 Dr. Irani that he did not need to come to see the patient
20 immediately but could wait until the next morning?

21 A. I don't think it was Dr. Wood. It was the E.R.
22 physician.

23 Q. Oh, excuse me. I guess the name is Debra Sunde?

24 A. Yes.

25 Q. And if Dr. Wood instructed Dr. Irani it would be

1 okay to the see patient the next day that would be within
2 acceptable standards, wouldn't it?

3 A. Yes, sir.

4 Q. And do you know of any care that he gave to this
5 patient that was not within the standard of care?

6 A. I do not.

7 Q. What is the role of a resident in a residency
8 training program? What is their requirements?

9 A. Progressive educational, professional knowledge
10 base, technical skills by that an orthopaedics, manual
11 skills, manual dexterity over the residency training period
12 until they are capable of functioning independently as a
13 practitioner.

14 It's usually immaterial whether they pass the Board
15 or not, because if, I as their mentor, teach them
16 appropriately, give them the broad spectrum of education
17 they're going to pass their Boards.

18 If you look at the American Board of Orthopaedic
19 Surgery, the statistics, they only have graduating rates of
20 residents, American trained residents have about a 96.
21 There's a little but average 94 percent success rate.
22 Foreign trained are around 65 percent success rate or on
23 their first time passing the Boards.

24 And that's a reflection of the adequacy and
25 competency of American orthopaedics.

1 Q. What's the primary purpose of a residency training
2 program in orthopaedic surgery?

3 A. To train orthopedists to take care of the
4 population.

5 Q. What role does education and supervision play with
6 regard to that program?

7 A. I think it's very critical.

8 Q. If you turn to Exhibit F, page 175 please. There's
9 some text messages between Dr. Sunde and Dr. Irani.

10 And Dr. Irani states to the emergency room doctor,
11 "Does it look like it may be more than simple cellulitis or
12 it might involve the surgical area?"

13 And department head, Dr. Sunde states, "No. I was
14 just messing with you. It looks like cellulitis to me.
15 Either way it's nothing that can't wait until tomorrow for
16 ya'll to check out." Do you see that?

17 A. Yes.

18 Q. That's the evidence that's related to this case
19 that Dr. Irani was criticized about; do you understand that?

20 A. Yes, sir.

21 MR. MERCER: I'm going to object to that.

22 These are text messages that are without
23 foundation, and quite frankly, I don't even see doctor --
24 okay. I'm just now seeing Dr. Sunde buried in here with a
25 lot of other text messages. But these are not business

1 records. They are not anything except apparently something
2 that was on Dr. Irani's telephone.

3 And to ask the expert -- I understand an expert can
4 give an opinion based on hearsay, but this is very far from
5 being reliable hearsay without a lot more foundation.

6 DR. FIRESTONE: It has the exact date that we are
7 talking about this case, Your Honor.

8 MR. MERCER: Many things have the same date. I
9 don't think that establishes anything.

10 DR. FIRESTONE: So there's evidence in rebuttal --
11 further evidence supporting what Dr. Eady had just testified
12 to.

13 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: All right.
14 You're saying that you're going to present testimony that
15 this -- we're talk about the bottom right?

16 DR. FIRESTONE: Yes. The bottom right --

17 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: That this
18 is --

19 DR. FIRESTONE: -- e-mail.

20 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: There will
21 be testimony by your client that this was a text message that
22 he exchanged with regard to the patient with cellulitis?

23 DR. FIRESTONE: That's right. That Dr. Irani, the
24 resident, exchanged with the emergency room physician.

25 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: We have

1 that evidence he. Why can't he comment on that?

2 MR. MERCER: Well, we don't have that evidence at
3 this point, and it's hearsay. There's a lot of other stuff
4 in here like, "Where I can get good samosas?" Is all of this
5 going to come in?

6 DR. FIRESTONE: Well, we certainly can certainly
7 redact the others if you object to the samosas.

8 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I'm not
9 going to rule on the entire exhibit at this time, but if he
10 wants to make a representation as an officer of the Court
11 that he's going to provide testimony from his client. This
12 is fine.

13 DR. FIRESTONE: I will make a representation that
14 Dr. Irani will be testifying about the text message and what
15 influence it had on him.

16 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Then the
17 expert can assume that that's correct and give us his
18 opinions on that. Why wouldn't he be able to do that?

19 MR. MERCER: For the reasons I've stated. It just
20 seems fairly remote. He's already testified from his
21 understanding based upon being there.

22 If they want to submit it as hearsay and
23 corroborating later on, they can without his offering opinion
24 that this person actually said that, which he apparently
25 doesn't know.

1 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: All right.
2 Well, I'm going to overrule the objection, and you can -- you
3 know, you're going to have to assume that this was something
4 that was said and base your opinion on that.

5 Obviously, you weren't party to this text message.
6 I think that's fair.

7 BY DR. FIRESTONE:

8 Q. Is this consistent with the way the VA emergency
9 room calling the resident deals with whether the doctor needs
10 to come there immediately or whether it can wait?

11 A. Yes, sir. The VA is now heavily reliant on e-mail
12 messages but between physician. Primarily because the
13 physicians are off in different places.

14 It works best for the VA in which we can
15 communicate with each other, and so it is consistent with the
16 way the VA does business with each other.

17 Q. Doctor, how well do you know Dr. Irani?

18 A. I know Dr. Irani from -- well, let me go back.
19 The surgical ICU unit at the VA is far as from here, my
20 office at the time, is that back door.

21 And I make my rounds at the surgical ICU unit every
22 morning. First thing I did when I get there is hung up my
23 coat. And the SICU nurses are very quick to tell you if
24 something is going on with any resident that is rotating on
25 that service, and they love to tell me about any -- they love

1 to tell me in the past tense because there's no residents
2 there now -- but they loved to tell me about any problem they
3 were having with the orthopaedic surgery residents.

4 They also love to tell me about the ones that they
5 like and the things that they admired in a resident. And I
6 got many comments on him when he was there in rotation from
7 those nurses that he was always there, that he did good at
8 exams. He was careful with managing the patient.

9 My observations of him was at a distance primarily
10 because he was on the surgical ICU service and the chief of
11 the surgical service, the director of surgical services, was
12 actually his direct supervisor.

13 But that position's office was as far as from here
14 to you (indicating), and we always talked. Certainly if
15 Dr. Brown had any problems with any of the orthopaedic
16 residents, he was right there to tell me.

17 Also, if there was a problem with a resident since
18 I am the site director, I think I've given you already they
19 send me about the residents not doing the chart work.

20 I never got one on Dr. Irani never. As you can
21 see, I got a lot on some of the others.

22 Q. Now, you have also reviewed some of the affidavits
23 and other statements that were provided to the Board, and
24 you've reviewed these as well.

25 You've reviewed the packet that he submitted to the

1 Medical Board, including the dean's report of his care, and
2 you've reviewed some of the statements about the
3 participation that Dr. Irani had in the emergency medicine
4 residency at UCLA. You've also talked with Dr. Irani.

5 Do you feel you have enough information about
6 Dr. Irani to give an opinion as to whether he is a safe
7 doctor?

8 A. I believe as much as anybody. Yes, sir.

9 Q. Do you have any opinion about whether he'd be a
10 danger to the public if he were to practice?

11 A. I do.

12 Q. What is that opinion?

13 A. I think he will not be.

14 Q. And why do you say that?

15 A. One, my personal experience reviewing the --
16 knowing about him at the VA, talking with Dr. Brown, who's
17 now retired from the VA. But when Dr. Brown supervised him,
18 and looking at the data in which there is an overwhelming
19 evidence to me in reviewing the those 35 letters, I didn't
20 see on discriminatory -- one negative comment about him.

21 Q. Doctor, are you familiar with the disciplinary
22 process that Dr. Irani went through that led to his
23 termination?

24 A. I am not in so far as his specific disciplinary
25 process. I know the process.

1 Q. Is the disciplinary process at Palmetto, as much as
2 you know it, a process that provides an adequate safeguard as
3 far as due process and fair procedure?

4 A. I found that it was not.

5 Q. And why not?

6 A. There was a previous resident that wasn't afforded
7 due process, who sued. One of our orthopaedic residents who
8 sued and was reinstated, because he was not afforded due
9 process.

10 MR. MERCER: Objection, Your Honor, Relevancy.

11 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: What's the
12 relevance of that? That could be a different situation.

13 DR. FIRESTONE: Well, the same program, same
14 disciplinary process.

15 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: I don't
16 think we know enough about that issue. You can ask him about
17 the process, as he knows it. If he participated in it.

18 BY DR. FIRESTONE:

19 Q. Are you familiar with the process with that
20 person --

21 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: No. I just
22 mean the process in general.

23 BY DR. FIRESTONE:

24 Q. Could you tell us about the process, in general,
25 that you know of that program?

1 MR. MERCER: Your Honor, I think there needs to be
2 some specification in time. This witness retired from
3 Palmetto in 2006, which would have been four years before
4 Dr. Irani even arrived, and the program was taken over by a
5 different program director.

6 So I would object on the basis that there's simply
7 a lack of personal knowledge as to how the program was run
8 four years after he left it.

9 DR. FIRESTONE: May I establish a foundation?

10 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Yes.

11 BY DR. FIRESTONE:

12 Q. Doctor, how are you familiar with the process of
13 discipline in that Palmetto program during the period of time
14 that Dr. Irani was there?

15 A. I don't know.

16 Q. Oh, you don't? Okay. Thank you.

17 In a program at Palmetto, would it have been
18 appropriate to not allow Dr. Irani to provide written
19 responses or verbal responses to the allegations that were
20 made against him?

21 MR. MERCER: Objection, incomplete hypothetical,
22 and the witness has just testified he doesn't know anything
23 about the process that either Irani went through or the
24 disciplinary process when Irani was there.

25 So to ask him hypotheticals when he's just very

1 forthrightly states that he has no information is irrelevant
2 and beyond the scope.

3 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Well, if
4 he's familiar with the disciplinary process, and so --

5 MR. MERCER: As of 2006.

6 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Right. But
7 I think he can say whether he feels that a person who is
8 going through that process should be allowed to submit
9 responses to the allegations that are made.

10 MR. MERCER: Okay. If that was the question.

11 Was that the question?

12 DR. FIRESTONE: That's the question, yes. You
13 asked a similar questions of Dr. Nuovo.

14 THE WITNESS: Would you repeat the question,
15 please?

16 DR. FIRESTONE: Could the court reporter read it
17 back, please?

18 (Whereupon, the last question was read back by the
19 Court Reporter.)

20 THE WITNESS: If I understand the question, it is
21 no. The answer is no.

22 BY DR. FIRESTONE:

23 Q. And why not?

24 A. Due process is to notify the person of the
25 allegations against him, give them a chance to respond,

1 usually in writing, to the allegations with specific data to
2 refute the allegations or to confirm them.

3 Q. Doctor, are you familiar with the GMEC?

4 A. Yes, sir.

5 Q. Could you describe for the Judge and the
6 Medical Board what is the role of GMEC, and how does that
7 relate to a resident who might be disciplined?

8 A. The GMEC means Graduate Medical Education
9 Community, and at Richland when I was there, it was composed
10 of all the chairs, the program directors, if there was a
11 separate program director, the D.I.O. or the Designated
12 Institutional Official, the dean, who always came, the
13 Adorned VA Medical Center Designated Official.

14 And if there was an issue that got to the level of
15 the GMEC, which I was a member of, the chair or the program
16 director presented their case first, and the resident was
17 allowed to present their rebuttal.

18 And then it was the GMEC -- the members of the
19 GMEC's prerogative to vote on whether that was the chair or
20 the program director's recommendation was appropriate.

21 Most of the time the chairs or the program
22 director's recommendation was accepted, but there are been
23 times that it was not.

24 Q. Do you have anything else you would like to say to
25 the Judge or the Medical Board that would bring justice in

1 this matter?

2 A. I came because I think it's important to right a
3 wrong, and I think a wrong was done here.

4 And I also, I got subpoenas from both of you.

5 DR. FIRESTONE: I have no further questions, Your
6 Honor, at this time.

7 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Okay. Did
8 you want to take a recess now?

9 (Whereupon, a recess was held from 2:54 until 3:14 p.m.)

10 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Let's go
11 back on the record.

12 Cross-Examination?

13 MR. MERCER: Thank you, Your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. MERCER:

17 Q. Good afternoon, Doctor.

18 A. Hi, sir.

19 Q. I'd like to talk about the cellulitis patient for a
20 minute now. That patient wasn't your patient, correct?

21 A. No.

22 Q. But you just knew that the patient was there?

23 A. Yes.

24 Q. Did you examine the patient?

25 A. I looked at the patient's leg. I didn't listen to

1 the heart and lungs.

2 Q. Uh-huh. And that patient did have cellulitis,
3 correct?

4 A. Yes.

5 Q. So cellulitis is a potentially serious condition?

6 A. Potentially, yes.

7 Q. Isn't it true that Dr. Irani provided a statement
8 saying that he should have gone to the VA sooner?

9 A. He did.

10 Q. He also stated that his use of Vicryl suture was
11 inappropriate?

12 A. I don't think he -- I don't remember he said that.
13 I remember he saying that he would change the suture.

14 Q. But if he said that, you wouldn't have a reason to
15 disagree with him?

16 A. No.

17 Q. Do you have --

18 MR. MERCER: May I approach, Your Honor?

19 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Yes.

20 BY MR. MERCER:

21 Q. There are so many binders here, I thought it would
22 be easier if I just pointed it out. I have, for the record,
23 opened Exhibit 6, and I have turned it to page 6.

24 And Doctor, you have that before you, yes?

25 A. Yes.

1 Q. And if I can find my copy.

2 Dr. Irani states at line 16:

3 "Additionally I was chastised for
4 closing a wound with Vicryl.

5 While this is inappropriate care, I'm
6 still upset that I grabbed the wrong
7 suture. It is important to know that
8 I was still early in my training."

9 So if that's Irani's explanation of it, you
10 wouldn't have a reason to disagree with that?

11 A. If you read further down -- if I can add to that,
12 he said he viewed his care plan with the attending and told
13 me to advise a closure with different sutures.

14 Q. That's right. He had to go back and redo it;
15 didn't he?

16 A. Yes.

17 Q. And when he was required to redo it, he did redo
18 did?

19 A. Yes.

20 Q. But the initial choice of the Vicryl was considered
21 by himself and his attending to be inappropriate?

22 A. That's what he said, yes.

23 Q. Now, as you've mentioned, I sent you a subpoena?

24 A. Yes, sir.

25 Q. And with the materials you provided me a letter.

1 Do you happen to have that?

2 A. I do not.

3 Q. Okay. Well, let me just ask you about it. I don't
4 know that we necessarily need to read it line by line.

5 But in that letter you indicated that Dr. Irani had
6 come to see you. Was it this year?

7 A. Yes, sir.

8 Q. To meet with you personally in South Carolina?

9 A. Yes.

10 Q. That was to discuss this case?

11 A. Yes.

12 Q. And whether you would testify for him?

13 A. If I would help him. Yes, sir.

14 Q. And then subsequent to that -- was it subsequent to
15 that, you had approximately eight conversations with
16 Dr. Irani?

17 A. I don't remember the exact number, but that sounds
18 about right. Yes, sir.

19 Q. In your letter you said as best you can recall
20 eight, and that's sounds right now?

21 A. Yes, sir.

22 Q. Before you met with Dr. Irani in June of this year,
23 had you maintained contact with him from time to time over
24 the years?

25 A. He knew my wife was sick. He called and asked me

1 about the health of my wife earlier in the year.

2 My wife has been sick for about three years. She
3 had found to have colon cancer, had to have chemotherapy,
4 radiation therapy, then a colon resection with an endoscopy.
5 So he knew about that and asked about how she was doing, if
6 that's what you're asking.

7 Q. That's somewhat what I'm asking about. Had you
8 communicated socially over the years?

9 A. No, sir.

10 Q. Did you have a relationship when he was at the VA?

11 A. As his supervisor, yes, as the site director for
12 the orthopaedic program.

13 Q. So you feel that you're relationship was remotely
14 enough that you can be completely objective enough about this
15 case?

16 A. I hope I can, yes.

17 Q. There's nothing about this case that raises any
18 kind of bias on your part?

19 A. I don't think so, sir.

20 Q. Okay. Well, you know that in August of 2011,
21 Dr. Irani was placed on remediation?

22 A. Yes, sir.

23 Q. That would have been August 15th. I don't know if
24 you know the date.

25 A. I don't.

1 Q. But on August 11th, you yourself had your surgical
2 privileges suspended, correct?

3 A. I did not have them suspended. They were summarily
4 suspended while an investigation was conducted. The VA
5 rules, the federal rules suspension, unless it's proven --
6 the allegations are proven the suspension does not exists.

7 Q. Well, it remained in place until November, didn't
8 it?

9 A. It did.

10 Q. And then the following year there was a
11 reinvestigation and your surgical privileges were suspended
12 again?

13 A. That is correct.

14 Q. As of the date of the Court order I have in March
15 of 2013 the Judge says that the surgical privileges are still
16 suspended. So I have -- my questions is: When did your --
17 the suspension -- when was the suspension lifted, if ever?

18 A. January of 2013, I think. I got -- I got -- it was
19 not a judge. It was the director of the VA hospital.

20 Q. Well, there was a judge involved, because you filed
21 a lawsuit against Dr. Kuhn, didn't you?

22 A. There was a judge involved, and she -- if you wish,
23 that information I'll show you. She decreed that I acted at
24 all times within the boundaries and limitations of any duties
25 at the VA.

1 Q. Well, the parameters of that decision was that you
2 sued Dr. Kuhn, correct?

3 A. That is correct.

4 Q. And you sued Dr. Walsh?

5 A. That is correct.

6 Q. And you sued Dr. Voss?

7 A. Yes.

8 Q. And you alleged that they made defamatory
9 statements that resulted in your being suspended in 2011?

10 A. That is correct.

11 Q. That lawsuit resulted in a counterclaim against you
12 for defamation by the USC surgeons, correct?

13 A. That is correct.

14 Q. And the order that we're taking about was whether
15 or not the United States could substitute in on the
16 counterclaim because you made these statements in the course
17 of your functioning as a surgeon at the VA?

18 A. Well, actually it's a whistleblower.

19 Q. Well, ultimately the suit was settled by everyone
20 giving everyone a mutual dismissal, correct?

21 A. Well, I was paid \$49,000 and I got a written
22 apology from the dean and director of the Graduate Medical
23 Education, vice president for medical affairs at Palmetto,
24 Richmond. So yes, it was settled, and I'm happy about it.

25 Q. In the course of that lawsuit, you sent a number of

1 letters, and that was what got the counterclaim going.

2 In one of them you referred to Doctors Kuhn, Voss
3 and -- Kuhn, Voss and Walsh as your accusers?

4 A. Yes.

5 Q. And in another one of them you stated that while
6 management of these acts of inappropriate behavior,
7 especially Dr. Kuhn's, it is within your purview, it is my
8 duty to state that no action will -- that no action will in
9 bold in these two physicians to acts in even worse conduct?

10 A. That is correct, which that indeed happened.

11 Q. So would it be fair to say that you have a long
12 standing biased against Dr. Kuhn?

13 A. No -- not be.

14 MR. MERCER: May I approach, Your Honor?

15 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Yes.

16 MR. MERCER: I would request this be marked as our
17 next in order, which I believe is Number 10.

18 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Yes.

19 (Department's Exhibit Number 10 was marked for
20 identification.)

21 BY MR. MERCER:

22 Q. Doctor, I'm going to show you an order of the
23 Federal Court in South Carolina. Is that the matter we've
24 been discussing?

25 A. Yes.

1 MR. MERCER: I would ask that the order be
2 judicially noticed as a Court of the United States, and it's
3 findings taken note of.

4 DR. FIRESTONE: No objection.

5 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Okay. And
6 judicial notice will be --

7 DR. FIRESTONE: What is the number of that exhibit?

8 MR. MERCER: 10.

9 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Exhibit 10.
10 (Department's Exhibit Number 10 was marked for
11 identification.)

12 BY MR. MERCER:

13 Q. I actually don't have any more questions about that
14 document, Doctor.

15 I'm going to ask you to look at Exhibit 6 again,
16 but look at the initial page of this type-written document.
17 Is this a document you've seen before?

18 A. Yes.

19 Q. And that's something that Dr. Irani showed you?

20 A. Yes.

21 Q. When did he first show it to you?

22 A. It was two days ago when I got here.

23 Q. Now, in this statement on pages -- on page 1, line
24 17 and 18. It states that -- I'm sorry. It's lines 14 and
25 15. It states:

1 I was encouraged to contact you
2 by a physician who is sympathetic to
3 my plight.

4 Do you know who that physician was?

5 A. No.

6 Q. Now, in the course of your activities with regard
7 to Dr. Irani, you filed a complaint with the ACGME, correct?

8 A. No.

9 Q. You did not contact a manager with the ACGME?

10 A. I did, but it was not a complaint.

11 Q. How would you describe it?

12 A. It was concern that the orthopaedic residency
13 program was pulling the residency from Adorn VA and denying
14 them the chance of a comprehensive education.

15 Q. And did the ACGME decline to pursue your
16 information?

17 A. That -- the letter I got back from them was that
18 that concern had to be raised by the residents.

19 Q. Okay. And was one of residents that you were
20 concerned about Dr. Irani?

21 A. All of them I was concerned about, yes.

22 Q. Did you ever encourage Dr. Irani to file a
23 complaint with the ACGME?

24 A. I don't remember that.

25 Q. So far as you know, today as we sit here, is the

1 USC still ACGME accredited?

2 A. As far as I know, yes.

3 Q. And Dr. Kuhn is still the program director?

4 A. As far as I know.

5 MR. MERCER: I don't have anything else.

6 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Any

7 Redirect?

8 DR. FIRESTONE: Just briefly Your Honor.

9

10 REDIRECT EXAMINATION

11 BY DR. FIRESTONE:

12 Q. Is it reasonable for the E.R. doctor in that
13 cellulitis case to have told Dr. Irani he did not have to
14 come until the next morning?

15 A. Yes.

16 Q. Why's that reasonable?

17 A. The physician's assessment of the seriousness of
18 the condition.

19 Q. It was the E.R. doctor who examined the patient,
20 correct?

21 A. Yes, sir.

22 Q. And this cellulitis was not related to the surgical
23 site of the surgery on the patient's knees, correct?

24 A. No. It was not.

25 Q. Now, the type suture material that's used by a

1 physician, it is sort of a matter of choice. In this case in
2 our residency, the attending physician's choice; is that
3 right?

4 A. With the caveat of where it's put. If it's in the
5 skin, it's inappropriate, but in the deep tissues from the
6 periosteum to subcutaneous, it's an appropriate suture.

7 Q. Is there any evidence that you're aware of
8 regarding the location these Vicryl sutures?

9 A. I could not find it. No, sir.

10 Q. This lawsuit that we -- is in Exhibit 10 that was
11 admitted by Mr. Mercer -- or by the Judge, excuse me. That's
12 a lawsuit that you essentially won, correct?

13 A. Yes, sir.

14 Q. And that started off with some defamation by
15 Dr. Kuhn against you; is that right?

16 A. What happened was is that on the 11th of August of
17 2011 Dr. Kuhn, Dr. Walsh and Dr. Voss went to the chief of
18 staff and said that I was practicing medicine below the
19 standard of care.

20 Q. In fact, you were found that your care was
21 completely within the standards; is that right?

22 MR. MERCER: Well, objection that's not supported
23 by the evidence.

24 DR. FIRESTONE: We have no evidence other than that
25 Court order.

1 MR. MERCER: If you're asking the witness if that's
2 what happened --

3 DR. FIRESTONE: Yes.

4 MR. MERCER: But you were basically suggesting
5 that's what happened. So I guess my objection is, it's
6 leading and suggestive.

7 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: All right.
8 Would you rephrase?

9 BY DR. FIRESTONE:

10 Q. Were you found to practice below acceptable
11 standards in that lawsuit?

12 A. I was not.

13 Q. And your privileges were completely reinstated
14 after the lawsuit was resolved?

15 A. Without restriction, yes, sir.

16 DR. FIRESTONE: Okay. I have no further questions,
17 Your Honor.

18 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Anything
19 further?

20

21 RECROSS EXAMINATION

22 BY MR. MERCER:

23 Q. In fact, the case never went to trial, correct?

24 A. Yes. That is correct.

25 Q. So there is no judgment that one person was guilty

1 and another person was not guilty?

2 A. After many years of very productive service to the
3 University of South Carolina and the Palmetto Richland, I
4 didn't want to hurt them any more. I wanted my name cleared.
5 I got that. I got my lawyer's fees paid for. That's all I
6 was looking for.

7 MR. MERCER: Nothing further.

8 DR. FIRESTONE: No further questions, Your Honor.

9 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Okay.
10 Thank you for your testimony. You're released.

11 DR. FIRESTONE: We have some time, but our next
12 witness is not scheduled until tomorrow morning. I would be
13 glad to put on Dr. Irani at this time and then take him off
14 the witness stand when our expert Dr. Graw arrives tomorrow
15 morning if that's okay with you.

16 ADMINISTRATIVE LAW JUDGE SCHLICHTMANN: Is that
17 agreeable to you, Mr. Mercer?

18 MR. MERCER: Sure.

19 DR. FIRESTONE: At this time we'll call Dr. Afraaz
20 Irani, M.D.

21

22

23

24 ///

25

(Time noted: 9:04 a.m.)